Manitoba

Office of the Superintendent - Pension Commission

Update #11-04 *Issue Date: June 21, 2011*

Pension Committees – Rules of Procedure and Governance

Reference: The Pension Benefits Act, Subsections 28.1, the Pension Benefits Regulation, Part 3

Manitoba's Pension Benefits Act (Act) and Pension Benefits Regulation (regulation) are based on the simple principle that participation and involvement by members in the administration and funding of pension plans increases participants' awareness and more clearly distinguishes the roles of employer and administrator.

Pension legislation defines the pension plan administrator as the body ultimately responsible for the governance of the pension plan. The plan administrator is responsible for the overall administration of the pension plan, which includes managing the pension fund.

If a pension plan must be administered by a pension committee, the regulation requires that the committee have:

- ☐ all the rights, powers and obligations of an administrator under the Act and this regulation;
- ☐ the power and the obligation to determine matters of policy and interpretation in the administration of the plan in accordance with its terms;
- ☐ the power to make recommendations to the employer regarding amendments to the plan or the supporting documents; and
- ☐ any other rights, powers and obligations assigned to the administrator by or under the plan or the supporting documents.

To the extent not covered by the plan or the supporting documents, the regulation requires pension committees to establish written rules of procedure and governance for exercising its powers and discharging its duties in accordance with the Act, this regulation and the terms of the plan.

The purpose of this Update is to assist pension committees in understanding their overall governance responsibilities through achieving and maintaining good governance practices.

PENSION PLAN GOVERNANCE

It is widely accepted by regulators and the pension community at large that pension plan governance – the structure and processes by which a pension plan is administered and monitored – is necessary to ensure that the general standard of care set out in section 28.1 of the Act is fulfilled. As a plan administrator, the pension committee is ultimately responsible for meeting this standard of care.

There are two general aspects to pension plan administration; the statutory standard of care to be met by administrators and any agent of the administrator and the governance system created and implemented to ensure the statutory standard of care is met.

A good governance system contributes to positive pension plan performance, demonstrates due diligence on the part of the plan administrator, and it is essential for the administrator to meet its obligations. Further, good governance minimizes risks and maximizes efficiency, promotes consistent administration of the plan in the best interests of members and beneficiaries, as it requires control mechanisms that encourage good decision-making, proper and efficient practices, clear accountability, as well as regular review and performance evaluation.

Legislative Requirements for Standard of Care

The standard of care set out in section 28.1 of the Act applies equally to all pension plan administrators, including pension committees. This standard is summarized below.

Subsection 28.1(2) requires every administrator to exercise the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person in administering the plan and in administering and investing the pension fund – the "prudent person" test.

Subsection 28.1(2.1) states that the administrator must invest and manage the assets of the pension fund in accordance with regulations and in a manner that a reasonable and prudent person would apply in investing and managing a portfolio of investments of a pension fund. Subsection 28.1(2.2) of the Act further states that, unless a plan provides otherwise, an administrator does not commit a breach of trust or contravene the Act if the administrator uses a non-financial criterion to formulate an investment policy or make an investment decision provided the administrator meets the prudent person requirement.

Subsection 28.1(3) requires an administrator to use all relevant knowledge and skill the administrator possesses, or ought to possess by reason of his or her business, profession or calling.

Subsection 28.1(5) requires that an administrator must not knowingly permit the administrator's interests to conflict with the administrator's duties and powers with respect to the plan or the fund.

Subsection 28.1(6) requires that where it is reasonable and prudent, the administrator must employ or appoint an agent(s) to carry out any act related to administering the plan and in administering and investing the pension fund.

Subsection 28.1(7) requires that if the administrator does employ or appoint an agent, the administrator must personally select the agent once satisfied of the agent's ability to carry out the act, and must supervise the agent as is prudent and reasonable.

Subsection 28.1(8) holds an employee or agent of the administrator to the same standard as the administrator in regard to conflict of interest.

Subsection 28.1(9) prohibits the administrator from benefiting from the plan other than pension benefits, ancillary benefits, a refund of contributions, or by being paid fees and reimbursed expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

Subsection 28.1(11) precludes an agent of the administrator to payment from the pension fund other than the usual and reasonable fees and expenses for services provided by the agent in respect of the pension plan.

Regulatory Requirements for Committee Rules of Procedure and Governance

While the Act does not mandate that all administrators establish and maintain a pension governance system, section 3.17 of the regulation requires pension committees to establish rules of procedures and governance, which contain prescribed minimum requirements and must be reviewed by the committee at least once every three years. Further, while there can be only one pension committee, if the committee establishes one or more subcommittees it may also wish to incorporate appropriate rules respecting subcommittees.

A pension committee's rules of procedure and governance are not necessarily limited to the following, but at a minimum must:

(a) provide for the election or appointment of a chair, a vice-chair and a secretary, and any other officers that the committee considers advisable;

(b) set out the powers and duties of the committee's officers;

(c) govern the making of recommendations respecting plan amendments to the employer;

(d) include provisions respecting meetings of the committee, (see "Committee Meetings" section for the provisions that must be included);

(e) include provisions governing the appointment, remuneration, supervision and evaluation of any delegates, agents or service providers; and

(f) require the rules to be reviewed at least once every three years,

and may include any other rules that the committee considers necessary or advisable for the operation, oversight, management and administration of the plan.

In the event of a conflict between a provision of the committee's rules and the plan or the supporting documents, the latter prevails unless the plan or supporting documents provide otherwise.

<u>Pension Committee Officers and Powers and Duties</u>

The pension committee's rules of procedure and governance must set out the parties within the committee that are responsible for the coordination and management of the committee's activities, as well as the duties. The regulation requires a committee have at least 3 officers: a chair, a vice-chair and a secretary. However, the committee may have such other officers as considered appropriate.

The chair acts as the committee's leader and ensures that the committee functions effectively. The chair presides over all meetings, signs official documents and certifies the minutes of committee meetings. Amongst other responsibilities, the chair ensures an ongoing planning process for the committee's activities in the short and long term.
The chair is the one to whom all the other officers must report.

The vice-chair takes over the functions of the chair if he or she is absent, in addition to other functions and duties required by the committee.

The secretary organizes meetings including booking meeting rooms, issuing notices of meetings, preparing the agenda and must provide each committee member with the documents and information required for administration of the plan, unless the committee has delegated that task to someone else. The secretary generally looks after all the committee's correspondence.

If one or more subcommittees are established, the pension committee may wish to include provisions respecting the composition of the subcommittees.

Recommendations for Plan Amendments

In general, the employer has the right to establish, amended or terminate a pension plan. However, the pension committee has the power to make recommendations to the employer regarding amendments to the plan or the supporting documents. This power is particularly important for ensuring the plan continues to meet all the requirements for on-going registration, federal and provincial.

The committee's rules of procedure and governance must include rules for the making of recommendations respecting plan amendments.

Committee Meetings

The committee's rules of procedure and governance must include provisions for meetings of the committee, including:

(a) requiring meetings at regular intervals, and set the dates, times and places of those meetings,

(b) establishing procedures for changing the date, time or place of a regular meeting and govern the notice to be given of the change,

(c) establishing procedures for calling and holding special meetings of the committee,

(d) governing the conduct and procedures of meetings, including the voting and quorum requirements for the transaction of business.

The rules should also

- identify the person or officer with the authority to certify document conformity and issue copies thereof,
- address all issues related to the keeping and preservation of records (committee decisions, meeting minutes, dissenting opinions, members' business interests, etc.),
- indicate the address of the committee "office",

- the remuneration of committee members (insofar as the plan provides that the members receive remuneration and refers to the internal management rules to determine the rate or amount), and
- if the plan provides for the compensation or reimbursement of committee members and refers to the rules of procedures and governance to set out the rate or amount, the rate or amount of such compensation or reimbursement.

In the event there are one or more subcommittees, the pension committee may wish to include provisions respecting subcommittee meetings and the conduct of those meetings.

Delegates, Agents and Service Providers

As the pension committee will not carry out the day-to-day administration of the pension plan, the committee can appoint agents to carry out administration of the plan, provided that the committee is personally satisfied of the agent's ability to carry out the duties for which the agent was hired.

However, while the pension committee may delegate duties and appoint agents to carry out the administration of the plan, the committee remains responsible for the work carried out on their behalf and must exercise prudent and reasonable supervision. So the committee's rules of procedure and governance must include provisions for the appointment, remuneration, supervision and evaluation of any delegates, agents or service providers chosen by the committee.

The pension committee, directly or with delegates, has to apply the knowledge and skill necessary to administer the plan and to administer and invest the pension fund. The rules should therefore address the development of and on-going training of pension committee members.

Other

Aside from the minimum requirements set out in section 3.17 of the regulation, it is up to each pension committee to establish the rules that will enable it to perform its duties, while exercising "the care, diligence and skill…that a person of ordinary prudence would exercise in dealing with the property of another person."

Resources

In May 1998, the federal pension regulator released its Guideline for Governance of Federally Regulated Pension Plans. This guideline describes best practices for the governance of federally regulated pension plans, and the responsibilities of plan administrators.

In October 2004 the Canadian Association of Pension Supervisory Authorities (CAPSA), released CAPSA *Guideline No. 4: Pension Plan Governance Guidelines and Self-Assessment Questionnaire.*

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